

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA**

**UNITED STATES OF AMERICA,**

**Plaintiff,**

**vs.**

**ERROLL FLYNN SHEPARD,**

**Defendant.**

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**CASE NO. 8:02CR353**

**MEMORANDUM  
AND ORDER**

This matter is before the Court on the Defendant's Motion to Vacate and Correct Sentence under 28 U.S.C. § 2255, ECF No. 846.

The Court notes that the Defendant filed his first § 2255 Motion, ECF No. 653, on June 2, 2008, and that motion was denied by the Court on March 9, 2009, at ECF No. 697.

When a second § 2255 motion is filed:

A second or successive motion must be certified as provided in section 2244 by a panel of the appropriate court of appeals to contain—

(1) newly discovered evidence that, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that no reasonable factfinder would have found the movant guilty of the offense; or

(2) a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable.

28 U.S.C. § 2255.

Without the required certification from the Eighth Circuit, this Court cannot consider the merits of the Defendant's second § 2255 motion and the pending motion will be denied.

IT IS ORDERED:

1. Defendant's Motion to Vacate and Correct Sentence under 28 U.S.C. § 2255, ECF No. 846, is denied; and

2. A separate Judgment will be issued.

DATED this 22<sup>nd</sup> day of June, 2017.

BY THE COURT:

s/Laurie Smith Camp  
Chief United States District Judge